



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/827,335      | 04/05/2001  | David E. Ewel        | 854.51US01          | 2979             |

7590 05/06/2003  
MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, MN 55402-0903

EXAMINER

PEZZLO, BENJAMIN A

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3683

DATE MAILED: 05/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/827,335

Applicant(s)

EWEL, DAVID E.

Examiner

Benjamin A Pezzlo

Art Unit

3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-10,12-21 and 23-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3,12,20 and 21 is/are allowed.
- 6) ☒ Claim(s) 1, 4-10, 13-19, 23-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 29 is objected to because of the following informalities:

line 13, "valve" should be "value";

line 16, "the first input valve" should be "a second input value"

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 10, 13-19, 23, and 25-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Imoto et al. (US 4755008).

Imoto et al. disclose a hydraulic brake system (see Figs. 5 and 6) for supplying a braking output (230) to a vehicle having at least one wheel, the braking system including a primary valve assembly 12 configured to receive a manually controlled input 14 that varies the braking output, the primary valve assembly including a first spool valve (the spool valve is within the master cylinder, 12) configured to vary the braking output according to the manually controlled input, and a secondary valve assembly 201 configured to receive input signals from a programmable electronic controller (ECU) the secondary valve assembly including a second spool valve 221 configured to be operated with the primary valve assembly; and an actuator (solenoid 242 and

Art Unit: 3683

armature 245) configured to engage and actuate the second spool valve according to the input signals received from the programmable electronic controller such that the second spool valve increases (see col. 15 lines 15-16: note that brake apply during acceleration i.e. manual traction control in conjunction with automatic traction control causes brake pressure fluid increase from both the primary and secondary valve assemblies) the braking output produced by the primary valve assembly.

Re claims 13-19, see Figs. 5 and 6 and the abstract.

Re claim 25, see col. 15 line 51.

Re claim 26, see solenoid 242 in Figure 6.

Re claim 27, see col. 15 lines 15-16: note that brake apply during acceleration i.e. manual traction control in conjunction with automatic traction control causes brake pressure fluid increase from both the primary and secondary valve assemblies which would necessarily cause a combined feedback to the operator.

Re claim 28, the claimed spring is inherent to the primary valve assembly, master cylinders include a spring loaded spool valve to aid in pedal return.

Re claims 29-36, see col. 15 lines 15-16: note that brake apply during acceleration, i.e. manual traction control, in conjunction with automatic traction control causes brake pressure fluid increase from both the primary and secondary valve assemblies which would necessarily cause a combined feedback to the operator - the first braking output is indicated by a non modulated braking event.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1, 4-9, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Imoto et al. (US 4755008).

Imoto et al. disclose a hydraulic brake system (see Figs. 5 and 6) for supplying a braking output (230) to a vehicle having at least one wheel, the braking system including a primary valve assembly 12 configured to receive a manually controlled input 14 that varies the braking output, the primary valve assembly including a first spool valve (the spool valve is within the master cylinder 12) configured to vary the braking output according to the manually controlled input, and a secondary valve assembly 201, the secondary valve assembly being configured to receive input signals from a programmable electronic controller (ECU) the secondary valve assembly including a second spool valve 221 configured to be operated with the primary valve assembly; and an actuator (solenoid 242 and armature 245) for engaging and actuating the second spool valve according to the input signals received from the programmable electronic controller such that the second spool valve assists the braking output produced by the primary valve assembly.

Imoto et al. fail to disclose the secondary valve assembly being integral with the primary valve assembly. In *In re Larson* the court found that use of a one piece construction instead of the structure disclosed in the prior art would be merely a matter of design choice, see MPEP 2144.04.V.B. Accordingly, it would have been obvious to one of ordinary skill in the art to

Art Unit: 3683

which the invention pertains at the time the invention was made to have provided the secondary valve assembly integrally with the primary valve assembly as merely a matter of design choice.

Re claims 4-9, see Figs. 5 and 6 and the abstract.

Re claim 23, see col. 15 lines 15-16: note that brake apply during acceleration i.e. manual traction control in conjunction with automatic traction control causes brake pressure fluid increase

Re claim 24, see above rejection re: making integral and note that a valve body for making the primary and secondary valve assemblies would necessarily first and second fluid chambers defined by the primary and secondary valve assemblies, respectively.

***Allowable Subject Matter***

6. Claims 3, 12, 20, and 21 are allowed.

***Response to Arguments***

7. Applicant's arguments with respect to claims 1 and 10 have been considered but are moot in view of the new ground(s) of rejection.

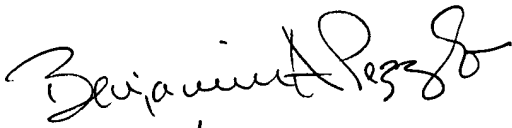
Art Unit: 3683

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin A Pezzlo whose telephone number is (703) 306-4617. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on (703) 308-3421. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 308-3519 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
5/3/03

BAP  
May 3, 2003

Benjamin A Pezzlo  
Examiner  
Art Unit 3683